

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1395

to be argued by

ALBERT J. KRIEGER

B
PJS

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1395

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

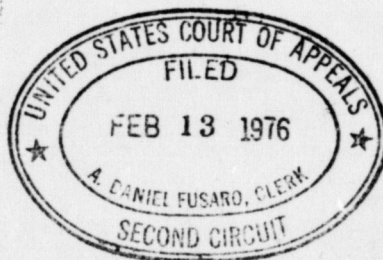
v.

OSWALDO ALFONSO-PEREZ,

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of New York

APPENDIX



ALBERT J. KRIEGER
745 Fifth Avenue
New York, New York 10022

JOSEPH BEELER
2829 Bird Avenue
Coconut Grove
Miami, Florida 33133
Attorneys for
Defendant-Appellant

PAGINATION AS IN ORIGINAL COPY

INDEX

Docket Entries

Charge to the Jury

74CR 780

BRAMWELL

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.: B. Fried

vs.

OSWALDO ALFONSO-PEREZ also
known as "Alfonsito" and
DOMINGO ENRIQUE ABREU-GOMEZ,
also known as "Chino"

For Defendant ALFONSO-PEREZ
Albert J. Krieger- 401 Bro
N.Y., N.Y. 10013 925-59

Did conspire to import into the US quantities of
heroin & cocaine etc.

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

Clerk,

Marshal,

Attorney,

Commissioner's Court,

Witnesses,

DATE

PROCEEDINGS

12-12-74 Before Bartels J - Indictment filed ordered sealed by the Court.

Bench Warrant Ordered.

12-13-74 Before Judd, J - case called - Govts application to have the
Indictment unsealed - motion granted - Indictment ordered
unsealed.

2/18/74 Before BARTELS, J.- Case called- Deft's motion for reduction of bail argued-
granted- Bail reduced to \$150,000.00 Motion for reconsideration set down
for 12/23/74 (OSWALDO ALFONSO-PEREZ)

1/18/74 Notice of appearance filed (ALFONSO-PEREZ)

4/74 Before BARTELS, J.- Case called- Bail hearing ordered and begun- motion
argued- deft's motion to reduce bail- granted- bail set at \$50,000.00 cash
with the conditions that the deft surrender his passport and deft is to
report to the U.S. Atty

74CR 780

[illegible]

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 -----X

5 UNITED STATES OF AMERICA. :

6 -against- :

75-CR-461

7 OSWALDO ALFONSO-PEREZ, :

8 Defendant. :

9 -----X

10
11 United States Courthouse
12 Brooklyn, New York

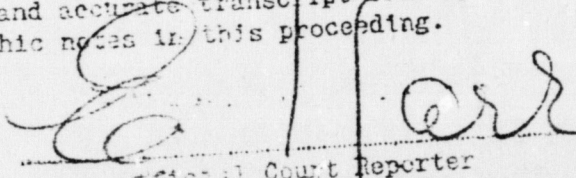
13 September 5, 1975
14 9:45 o'clock a.m.

15 B e f o r e :

16 HONORABLE JAMES L. WATSON, U.S.D.J.
17
18
19
20
21

22 EMANUEL A. KARR
23 OFFICIAL COURT REPORTER

24 I hereby certify that the foregoing is a
25 true and accurate transcript from my sten-
ographic notes in this proceeding.


Official Court Reporter
U.S. District Court

1 that this is for the purpose to overcome the kind of
2 approach which arises from association.

3 THE COURT: Mr. Krieger, the charge as I have
4 just read it is the way I am going to give it.

5 MR. KRIEGER: Then I have nothing to say.

6 MR. FRIED: Thank you, your Honor.

7 (At the conclusion of the conference, the
8 trial then was resumed at 10:00 a.m. in the
9 courtroom.)

10 (The ladies and gentlemen of the jury then
11 took their positions in the jury box.)

12 THE COURT: Ladies and gentlemen of the jury,
13 good morning:

14 Before I give my final instructions to you,
15 let me express on behalf certainly of the Court and
16 on behalf of myself personally, and I am sure both
17 the prosecution, that is the Government, and the
18 defendant's counsel, my appreciation for your long
19 and enduring service.

20 This case has taken much longer than I had
21 told you before and that any of us had anticipated.

22 I express this appreciation not only on
23 behalf of those parties which I mentioned, but for
24 the whole criminal justice system. It is only by
25 virtue of the type of service that you have rendered

1 that the system can work.

2 My personal word is that I personally and
3 deeply appreciate your endurance throughout these
4 five weeks. I believe the case started on
5 August 4th and it is now September 5th.

6 The instructions that I am going to give to
7 you are written out and I will read them. I did not
8 want to take the chance of saying anything that I
9 did not mean to say, so you will forgive me if I do
10 not sound as extemporaneous as I would like to sound.

11 It now becomes your duty to determine the
12 guilt or innocence of the defendant, as to the
13 charge alleged in the indictment.

14 Now, before turning to specific issues, let
15 me state to you the general principles and rules of
16 law that are applicable to criminal prosecutions
17 which you are to apply in judging this case.

18 You will recall that in my opening statement
19 to you I told you that the fact that a defendant
20 has been indicted by a grand jury is no evidence
21 whatsoever of his guilt and it is not to be permitted
22 to influence you in any way against him. I, in fact,
23 told you that an indictment is simply a charge and
24 that it is not to be considered in any sense as
25 evidence of the allegations it contains.

Charges of the Court

You will further recall that I told you that it was your duty as jurors to follow the law as stated in the instructions that I give you and to apply the Rules of law as given by the court to the facts as you find them from the evidence in the case.

With respect to the law that you are to apply in deciding this case, you are required, as I have said previously, to follow my instructions as it is the court's exclusive province to state the law that you are to apply and it is your duty to follow those instructions.

On the other hand, it is the exclusive and sole province and duty of the jury to judge the facts in the case and to consider and weigh the evidence for that purpose.

You, as the jury, have the sworn duty to exercise this power as judges of the facts, to do so both fairly and impartially, without bias or prejudice as to any party. The law of this land does not permit jurors to be governed by sympathy, by prejudice or by what the public might think. The defendant who is accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as I am giving

Charge of the Court

it to you, and reach a just verdict, regardless of consequences.

In determining whether any fact has been proved, you should consider and weigh all the evidence having a bearing on the issue.

During the course of the trial, I have occasionally asked questions of the witnesses. I have done so in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions may have related. My questions were only asked in an effort to clarify or make more clear the testimony of the witness. If I have made any comments on the testimony you are at liberty to disregard such comments of the court in arriving at your own findings as to the facts.

In the course of the trial, I have been called upon to rule on the admissibility of evidence. You are not to concern yourselves with the reasons for such rulings.

In admitting evidence to which any objection is made, the court does not determine what weight should be given such evidence nor does it pass upon the credibility of the witness. These are questions

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for you to determine.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulations as evidence, and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated; and all applicable presumptions stated in these instructions.

You must not single out any one instruction alone as stating the law, but you must consider all of the instructions as a whole.

I again remind you of the questions put to you when you were being chosen as jurors in this case. I asked at that time whether or not you would be able and willing to render a verdict solely on the evidence presented at the trial and the law as I give

Charge of the Court

1
2 it to you in my instructions disregarding any other
3 ideas, notions or beliefs about the law that you may
4 have. I state you are not to be concerned with the
5 wisdom of any rule of Law stated by the court.
6 Regardless of any opinion you may have as to what the
7 law ought to be, it would be a violation of your
8 sworn duty to base a verdict upon any other view of
9 the law than that given in the instructions by the
10 court. Just as it would be a violation of your sworn
11 duty, as judge of the facts, to base a verdict upon
12 anything but the evidence that has been presented in
13 this case.

14 As a further part of the general principles
15 and rules of law applicable to criminal prosecutions
16 which you are to apply, I instruct you that:

17 A defendant enters a criminal case with the
18 benefit of the presumption of innocence. That
19 presumption means that he is to be regarded by you
20 as innocent unless he is proven guilty beyond a
21 reasonable doubt of the crime charged.

22 The burden of proving the defendant's guilt
23 is on the Government. The Government must prove
24 beyond a reasonable doubt every essential element of
25 the offense charged in the indictment. A defendant

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has no burden to sustain. He is not required to
testify. He is not obliged to nor must he prove
himself innocent. Mere speculation, conjecture or
suspicion is not sufficient to sustain the burden
of proof placed on the Government.

By that I mean that before you may find the
defendant guilty of the criminal charge alleged in
the indictment, you must be convinced of his guilt
beyond a reasonable doubt.

The defendant may be proven guilty by either
direct or circumstantial evidence. Direct evidence
is the testimony of one who asserts actual knowledge
of a fact such as an eyewitness; circumstantial
evidence is proof of a chain of facts and
circumstances indicating the guilt or innocence of
a defendant. The jury may make common sense
inferences from the proven facts.

The drawing of inferences is the proper
function of the jury. The process of drawing
inferences is to be governed by human experience.
The jury is not limited in drawing only those
inferences most favorable to the accused, but must
weigh the inferences favorable and unfavorable to
the accused to see if the evidence points to guilt.

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A reasonable doubt, as the word implies, is a doubt based upon reason and common sense. It may arise from the want of the evidence or from the absence of evidence. A reasonable doubt does not mean a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. It is not sympathy for a defendant. A reasonable doubt does not mean a possible doubt. It is rarely that anything can be proved to an absolute certainty or beyond any possible doubt, and the law does not require this. It is not a vague, speculative, imaginary something.

What the courts have frequently said is that proof beyond a reasonable doubt refers to such a doubt as would make you hesitate to act in your important affairs. You must frequently make up your mind on decisions in your own life, and you hear conflicting opinions and even divergent statements of fact as to what the consequences of your decision might be. You can consider this as a test of whether there is a doubt in this case such as would make you hesitate to act in an important affair in your own life.

And so we come to one of the crucial questions

Charge of the Court

in the case. By what yardstick and in accordance with what rules of law are you to judge the credibility of the witnesses.

This judging of testimony is very like what goes on in real life. People may tell you things which may or may not influence some important decisions on your part. You consider whether the people you deal with had the capacity and the opportunity to observe or be familiar with and to remember the things they tell you about. You consider any possible interest they may have, and any bias or prejudice. You consider a person's demeanor, to use a colloquial expression, you "size him up" when he tells you anything; you decide whether he or she strikes you as fair and candid or not. Then you consider the inherent believability of what he says, whether it accords with your own knowledge or experience. It is the same thing with witnesses. You ask yourself if they have knowledge of the events and transactions they are talking about. You watch them on the stand as they testify and note their demeanor. You decide how their testimony strikes you.

It is the province of the jury to determine

Charge of the Court

the credibility of each witness and the weight to be given to his testimony. In weighing the testimony of each witness the jury should consider his relationship to the Government, or to the defendant; his interest in the case, if any, in the outcome of the case; his manner of testifying; his candor, fairness and intelligence; and the extent to which he has been corroborated or contradicted, if at all, by other credible evidence.

There is testimony in this trial that on prior occasions witnesses may have made statements inconsistent with what they said here. Evidence that at some prior time a witness said or did something which is inconsistent with a witness's testimony at the trial may be considered by the jury for the purpose of judging the credibility of the witness.

You may also consider a witness's failure to disclose information on prior occasions when the opportunity to do so presented itself and whether that failure amounts to inconsistency with the testimony here.

Whether a prior statement is inconsistent with the testimony at the trial is a question for

Charge of the Court

you, the jury, to determine.

Whether there was a failure to reveal information on a prior occasion when the opportunity to do so was present is a question for you, the jury, to determine, and whether that represents an inconsistency with present testimony is also for you to determine. In making that determination consider all the facts and circumstances under which the prior statement was given or under which there may have been a prior failure to reveal information. It is entirely for you to decide what effect, if any, these matters should have on your evaluation of a witness's credibility.

As to witnesses who may have admitted lying at a prior trial or otherwise in the past, you should consider their testimony and decide whether you wish to accept or reject it in whole or in part. You may decide, for example, that an admitted liar is unbelievable. Or conversely, you may accept testimony on the ground you believe there are persons who have lied in the past, but are not incapable of telling the truth in the present. This is for you, and only you, to decide.

The testimony of a witness may be discredited

Charge of the Court

or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is a circumstance which you may consider in determining the credibility of the witness. It is solely the province of the jury to determine the weight to be given to any prior conviction.

The testimony of a witness who provides evidence against a defendant in return for some financial consideration, or for immunity from punishment, or for personal advantage of some kind, must be weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the witness's testimony has been affected by the consideration he may have received or may have been promised.

I use the word or the term "participant" to describe someone who joins with another in the commission of a crime. The Government has a right to rely on the testimony of a participant to prove its case. In the nature of things, a participant may be the only one who can testify to the events in

Charge of the Court

question. A participant does not become incompetent or unbelievable as a witness because of participation in the crime charged. On the contrary, the testimony of a single participant alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even without corroboration or support by other evidence. However, the jury should keep in mind that the testimony of a participant is always to be received with caution and weighed with great care. As with all witnesses, the credibility of a witness who was a participant is for you and you alone to judge.

The law does not compel a defendant to take the witness stand and testify and no presumption of guilt or inference of any kind is permitted to be drawn from the fact that the defendant did not testify. It would be a violation of your oath as jurors to speculate on why a defendant refrained from testifying. A defendant, being presumed innocent, has an absolute right to require the Government to establish his guilt beyond a reasonable doubt and in no way does a defendant have any burden in this trial.

Now I turn to the charge in the indictment. As I said before, the statements in the indictment

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are not evidence. They are simply charges to which the defendant has pleaded "not guilty". The charge is as follows:

"THE GRAND JURY CHARGES:

"On or about and between the 1st day of November 1969 and the 31st day of August 1970, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, OSWALDO ALFONSO-PEREZ, also known as "Alfonsito" and DOMINGO ENRIQUE ABREU-GOMEZ, also known as "Chino", the defendants, together with Luis Ureta-Morales and Gino Fantuzzi, named herein as co-conspirators but not as defendants, and others known and unknown to the Grand Jury, willfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

"1. It was part of said conspiracy that the defendants and co-conspirators fraudulently and knowingly would import and bring into the United States quantities of heroin and cocaine, narcotic drugs, contrary to law.

"2. It was further a part of said conspiracy that the defendants and co-conspirators willfully,

Charge of the Court

1
2 knowingly and unlawfully would receive, conceal, buy,
3 sell and facilitate the transportation, concealment
4 and sale of quantities of heroin and cocaine,
5 narcotic drugs, after the narcotic drugs had been
6 imported and brought into the United States, knowing
7 the same to have been imported and brought into the
8 United States contrary to law.

9 "3. It was further a part of said conspiracy
10 that the defendants and co-conspirators would conceal
11 the existence of the conspiracy and would take steps
12 designed to prevent disclosure of their activities.

13 "In furtherance of the conspiracy and to
14 effect the objects thereof, the following overt acts,
15 among others, were committed within the Eastern
16 District of New York and elsewhere:

"OVERT ACTS:

17
18 "1. On or about February 5, 1970,
19 co-conspirator Ureta-Morales travelled by airplane
20 from Santiago, Chile to John F. Kennedy International
21 Airport, Queens, New York.

22 "2. In or about February 1970, defendants
23 ALFONSO-PEREZ and ABREU-GOMEZ met with co-conspirator
24 Ureta-Morales in Miami, Florida.

25 "3. On or about March 20, 1970,

Charge of the Court

or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States shall be" punished according to the law.

Now, when the statute says "conspires to commit any of such acts" it is referring back to the acts of importing, receiving, concealing, buying, selling or in any manner facilitating the transportation, concealment or sale of a narcotic drug. It is the "conspiring" portion of Section 174 on which this indictment is based.

This indictment does not charge what we call the substantive crimes -- that is to say, actual importations, actual sales, actual receiving or concealing or facilitating the transport. The indictment charges the crime of entering into a conspiracy to perform those prohibited acts.

A conspiracy is a combination of two or more persons to accomplish an unlawful purpose. While it involves an agreement to violate the law, it is not necessary that the persons charged with conspiring

Charge of the Court

meet together or enter into an expressed and formal agreement or that they state in words or writing what their object or purpose was to be and how it was to be carried out. What the evidence in the case must show, beyond a reasonable doubt, in order to prove a conspiracy existed, is that the members of the conspiracy in some way or manner, positively or tacitly came to a mutual understanding to try to accomplish an unlawful plan. Please note a distinction between what you may consider regarding the existence of a conspiracy and what you may consider regarding whether the defendant was a member of the conspiracy.

In determining whether a conspiracy existed, you should consider the actions and declarations of all the alleged participants. In determining whether the defendant was a member of the conspiracy you may consider only testimony regarding his acts or his statements.

However, if you should conclude beyond a reasonable doubt that a conspiracy existed, and that defendant was a member of the conspiracy, then all the acts or declarations of any other member of such conspiracy done in furtherance of the conspiracy

Charge of the Court

during its existence, in or out of the defendant's presence, may be considered as evidence against the defendant.

The evidence in the case need not establish that all the means or methods set out in the indictment were agreed upon or actually carried out, nor that all the persons claimed to have been members of the alleged conspiracy were so. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used in an effort to make the conspiracy succeed and that two or more persons including the defendant were knowingly members of the conspiracy.

Now, neither association with conspirators nor mere knowledge of illegal activities standing alone is enough to prove participation in a conspiracy.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. A person need not know the names of all the conspirators or even how many there are. It is not necessary that the accused be aware of the acts or statements of other members of the alleged conspiracy,

Charge of the Court

provided those acts or statements were for the purpose of the conspiracy as he understood it.

Before the jury can find a defendant was a member of a conspiracy, the evidence must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant knowingly participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

When we talk about the Government's burden to prove its case beyond a reasonable doubt, it doesn't mean that the Government has to convince you that every bit of evidence that was offered was true beyond a reasonable doubt. The burden is to prove the essential elements of the crime charged beyond a reasonable doubt. In other words, we fragment, take apart the crime charged and for ready consideration and easy observation of your obligation, we say the Government must prove one, two, three, four and five -- the Government has to prove all five. If it doesn't, then you must find the defendant not guilty.

In this case there are five elements of the crime of conspiracy which the Government must prove beyond a reasonable doubt.

First, that two or more people were involved

Charge of the Court

1
2 since a conspiracy requires an agreement and that
3 the conspiracy existed at or about the time alleged,
4 on or about and between the 1st of November 1969
5 and the 31st of August 1970;

6 Second, that one of the purposes of the
7 conspiracy was to import, receive, conceal, buy,
8 sell, or facilitate the transportation or sale of
9 cocaine or heroin which had been imported into the
10 United States contrary to law;

11 Third, that the defendant knew that the
12 cocaine or heroin had been imported into the
13 United States contrary to law;

14 Fourth, that the defendant took part in such
15 conspiracy knowingly and intentionally, and

16 Fifth, that one of the conspirators did some
17 overt act to carry out the purpose of the conspiracy.

18 The burden is always upon the prosecution to
19 prove beyond a reasonable doubt every essential
20 element of the crime charged. You cannot infer the
21 existence of one element from proof of another
22 element. If you are left with a reasonable doubt as
23 to any element of the crime, you must acquit.

24 The first two elements do not necessitate a
25 lengthy explanation. The first element is the

Charge of the Court

Determination that two or more people were involved. The second element is the determination that the defendant was, or to import, receive, conceal, buy, sell or facilitate the transportation or sale of cocaine and heroin.

Now we will say as to the last three elements. The third element is knowledge on the part of the defendant of the importation of the narcotics. Regarding this element the law is that if you find beyond a reasonable doubt that a defendant had possession of cocaine or heroin, the fact of possession alone, unless explained to the satisfaction of the jury by the evidence in the case, permits you to draw the inference that cocaine or heroin was imported into the United States contrary to law and you may draw the inference that a defendant had knowledge that the cocaine or heroin was imported contrary to law. You are not required to draw such inference or make such finding.

Since some cocaine is legally produced in the United States or legally imported and some of that is stolen and sold as narcotics, you may consider the amount involved in the case and whether the cocaine involved in the case had been imported into

Charges of the Court

the United States contrary to law.

In fact, in this case, you are not confined to an inference of importation from the amount of cocaine involved. There is testimony that the cocaine which was coming into the United States was imported from South America and you may find that the defendant knew this. You are not compelled to reach that finding of course.

Heroin, unlike cocaine, is found in this country only as a result of importation from abroad. For this reason if you find beyond a reasonable doubt that defendant had possession of heroin, the fact of possession alone, unless explained to the satisfaction of the jury by the evidence in the case, permits you to draw the inference that the heroin was imported into the United States contrary to law, and you may draw the inference that the defendant had knowledge that the heroin was imported contrary to law.

You are not required to draw such inference or make such finding.

The law is that you must acquit the defendant unless you determine beyond a reasonable doubt that the cocaine or heroin allegedly involved in this case was brought into the United States illegally and that

Charge of the Court

the defendant knew it was illegally imported.

The fourth element is that the defendant knowingly and intentionally took part in the conspiracy charged. An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or other innocent reasons. Whether something is done knowingly involves a state of mind, but a state of mind, like other facts, can be determined from the evidence and from inferences from the evidence.

The fifth element the Government must prove is that one of the conspirators did some overt act to carry out the purpose of the conspiracy.

By overt act I mean an act done during the period of the conspiracy in furtherance of the objectives of the conspiracy such as making a trip for a purpose in furtherance of the conspiracy, delivering narcotics or receiving money as the result of a narcotics deal.

In proving overt acts to establish that the conspiracy was something more than a mere unexecuted agreement, the Government is not confined to, and need not prove the overt acts stated in the indictment. It is sufficient that the Government establish

Charge of the Court

any overt acts committed in furtherance of the conspiracy. A conviction may be based on overt acts not alleged in the indictment.

If you find that any of the conspirators knowingly did any acts in furtherance of the conspiracy, and that the accused was a party to the conspiracy at the time, you may find him guilty as a conspirator regardless of who did the overt act.

If the accused be proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case.

Remember also that the question before you can never be, "Will the Government win or lose the case?" The Government always wins when justice is done, regardless of whether the verdict is guilty or not guilty.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or

Charge of the Court

persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself, but do so only after an impartial consideration of the evidence in the case

Charge of the Court

1
2 with your fellow jurors. In the course of your
3 deliberations, do not hesitate to reexamine your own
4 views, and change your opinion, if convinced it is
5 erroneous. But do not surrender your honest
6 conviction as to the weight or effect of evidence,
7 solely because of the opinion of your fellow jurors,
8 or for the mere purpose of returning a verdict.

9 Remember at all times, you are not partisans.
10 You are judges -- judges of the facts. Your sole
11 interest is to seek the truth from the evidence in
12 the case.

13 The verdict of the jury, as I said before,
14 must be unanimous. Each juror must decide the case
15 for himself and herself. It would be improper for a
16 juror to take an intransigent, obstinate position on
17 the case and refuse to talk about the case with his
18 or her fellow jurors. The jury process is a
19 deliberative process. You would be violating your
20 duty if you just refused to talk to the jurors about
21 the evidence in the case.

22 It would be just as wrong for a juror to
23 indicate to his fellow jurors that he or she will go
24 either way and will go along with the majority, or,
25 "if you need another vote, you can have it." That

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would be abandoning your obligation.

It's very important that each juror understand that he must give consideration to the evidence, listen to his fellow jurors, and in that way attempt to arrive at a unanimous verdict.

Upon retiring to the jury room, juror number one will act as your forelady. The forelady will preside over your deliberations and will be your spokesman here in court.

If it becomes necessary during your deliberation to communicate with the Court, you may send a note by a Marshal signed by your forelady, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any members of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the marshal that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Charge of the Court

Bear in mind also that you are never to reveal to any person how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

During your deliberations you may be interested in having some of the testimony read back. It would be very helpful if you tried to identify the testimony you want as precisely as possible. I will then read it to you -- only the specific testimony you want and nothing more. If I gave you what I wanted to give you or selected passages, either the Government or the defendant's counsel would complain that I am favoring one side or the other. So my purpose is to try to understand what you want and then to give you only what you want.

But, if you try to identify it by subject matter - witness - if you say direct examination or cross, redirect, recross, that would be helpful too. But that is kind of difficult. If you give me a subject matter, I then have to go through all the examinations and pick it out. And that takes time. So, if you don't get a quick response, don't think I'm uninterested or have forgotten all about you. It

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1
2 just takes time getting what you want. We are
3 fortunate in that we have the transcript of the
4 testimony. So it makes it easier to find. But don't
5 ask to have the transcript itself sent in. You see,
6 the transcript contains a lot of matter that I heard
7 outside your presence. And if I didn't want you to
8 hear it then, I certainly don't want you to read it
9 now. So, if you cannot get the transcript, I will
10 read it to you and I will read it in open court.

11 I cannot enter into any discussion in open
12 court. I will not hear questions in open court
13 because that creates a lot of confusion and concern.
14 You might ask a question that isn't precise enough
15 and it will cause a lot of scurrying around and
16 trying to find out what you meant. Every question
17 you have will come through your forelady or, as I
18 indicated before, by any two members of the jury,
19 one or two members, signing a note and sending it to
20 the Court.

21 In the same manner, the exhibits will be held
22 here and you may request those exhibits which you
23 might want to examine.

24 Notify me when you have arrived at a
25 unanimous verdict. Don't tell me what the verdict

Charge of the Court

1
2 is. Just say you have arrived at a verdict. You
3 will send that note through your forelady.

4 In a trial, the verdict is first given in open
5 court. After you have arrived at a verdict, I will
6 ca/l you into the courtroom and I will ask the
7 forelady to stand and say, I have your note saying
8 you have arrived at a verdict."

9 "In United States of America against
10 Oswaldo Alfonso Perez, how do you find the defendant
11 Oswaldo Alfonso Perez, guilty or not guilty?"

12 And you will render a verdict.

13 And I will ask juror number two whether she
14 heard the verdict rendered by the forelady and
15 whether that's her verdict, and juror number three
16 whether it's his verdict, and juror number four, and
17 so forth and so on down to juror number twelve. If
18 all give the same verdict, then it becomes a verdict
19 of the case.

20 I must regretfully, Mr. Deutch, excuse you
21 because you are the last alternate.

22 I want to thank you, as I have said to the
23 rest of the jury, for your long and arduous service
24 here.

25 The jury may now begin its deliberations.



